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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,188	12/16/2003	Gene A. Voss	LOW FLOW BAILER	5553

7590 08/25/2005

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EXAMINER	
GARBER, CHARLES D	

ART UNIT	PAPER NUMBER
2856	

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/737,188	VOSS, GENE A.	
	Examiner	Art Unit	
	Charles D. Garber	2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 August 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) *16* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *18 May 2004* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election of group I, claims 1-15 in the reply filed on 08/10/2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Drawings

The drawings are objected to under 37 CFR 1.83(a) because they fail to show "intake orifice 32" as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "filtering device 40".

Specification

The disclosure is objected to because of the following informalities: paragraph 0024 of Applicant's disclosure refers to figure 5 which is not noted in the description of drawings section. There is also no figure 5 in the drawings submitted with this application.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 5-7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voss (US Patent 5,404,949) and Ridgeway, Jr. (US Patent 5,878,813).

Regarding claim 1, Voss discloses plastic tube 12 which is shown in the figures 1,3 to be an elongate, substantially cylindrical conduit member having first and second conduit ends; caps 20 and 28 are a first conduit member terminus; a second conduit member terminus respectively as in the instant invention

Cap 28 is shown to be shaped to generally define a convex dome extending outwardly from the tube at a second end, and centered on the longitudinal axis of symmetry of the tube. Cap 28 has in-take orifice 32 defined therethrough and a ball valve 36 which may control passage of fluid through the orifice 32;

Voss does not teach a flow control insert having a flow control orifice and being sized and shaped for telescopic engagement with said in-take orifice, the flow control orifice having a cumulatively lesser cross section than said intake orifice.

"Telescoping" is defined by Merriam-Webster's Online Dictionary as "to slide or pass one within another like the cylindrical sections of a collapsible hand telescope".

Ridgeway, Jr. teaches protrusion 46 which is substantially cylindrical that is inserted within the spout of a sampler to pass within the spout and break the ball-spout seal and release fluid from the sampler. The orifice 48 has a smaller diameter than the spout opening.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a flow control insert having a flow control orifice as substantially taught by Ridgeway, Jr. in order to break the ball seal and allow fluid to pass from the spout or orifice in a controlled manner.

As for claim 2. the Voss cap 20 is shaped to generally define a first convex dome extending outwardly from the pipe at a first end as shown. The cap 20 is substantially centered on the longitudinal axis of symmetry of the pipe. The cap 20 has means 26 to which a cord may attach.

As for claim 3, the means 26 is shown in figures 1 and 2 is the same as that disclosed in the instant invention which is depicted in figure 1.

As for claim 5, The cap 20 shown in figures 1 and 2 of the Voss reference and first terminus member depicted in figure 1 of Applicant's disclosure appear identical and therefore also function the same.

As for claim 6. The cap 28 shown in figures 3 and 4 of the Voss reference and second terminus member depicted in figure 1 of Applicant's disclosure appear identical and therefore also function the same.

As for claims 7 and 12, the Voss reference orifice 32 is shown in figure 4 to be centered on an axis of symmetry of cap 28 as in the instant invention.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Voss (US Patent 5,404,949) as modified by Ridgeway, Jr. (US Patent 5,878,813) and applied above and further in view of Pratt (US Patent Application 2002/0104648).

The references as applied above to claim 3 do not expressly teach negative buoyancy means for adjusting buoyancy of said apparatus when submersed in liquid.

Pratt '648 discloses a bailer (sampler) 10 teaching weights 18 for adjusting the bailer weight and it descent rate in a fluid body so as not to cause agitation that would disturb sediments and the like (paragraphs 0004 and 0005) and increase oxygen content thereby generating false data.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide weights for adjusting the bailer weight and it decsent rate in a fluid body so as not generate false data from the disturbance caused by uncontrolled descent rate.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voss (US Patent 5,404,949) as modified by Ridgeway, Jr. (US Patent 5,878,813) and applied above and further in view of Pratt (US Patent 6,543,302).

As for claim 10, cap 28 has a nesting lip extending from the circumferential margin of the cap, the first nesting lip being configured for slidably and snugly nesting within the tube at a first end for attaching the cap to the tube.

Voss teaches the cap should be sonically welded and is therefore not removable.

Pratt '302 teaches check valve 16 with annular wall 34 that is slidingly positionable with a bailer tube and is therefore removable.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide for a slidingly positionable lower valve in a bailer so the device may be disassembled for cleaning.

As for claim 11, cap 20 has a nesting lip extending from the circumferential margin of the cap, the first nesting lip being configured for slidably and snugly nesting within the tube at a second end for attaching the cap to the tube.

Voss teaches the cap should be sonically welded and is therefore not removable.

Pratt '302 teaches cap 22 with an annular wall (shown but no number) that is slidingly positionable with a bailer tube and may be optionally removable in order to pour contents from the bailer (column 3 lines .

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a cap that is slidingly positionable so it may be advantageously removed to pour contents from the bailer.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voss (US Patent 5,404,949) and Mohs (US Patent 5,753,831).

Regarding claim 1, Voss discloses plastic tube 12 which is shown in the figures 1,3 to be an elongate, substantially cylindrical conduit member having first and second conduit ends; caps 20 and 28 are a first conduit member terminus; a second conduit member terminus respectively as in the instant invention

Cap 28 is shown to be shaped to generally define a convex dome extending outwardly from the tube at a second end, and centered on the longitudinal axis of symmetry of the tube. Cap 28 has in-take orifice 32 defined therethrough and a ball valve 36 which may control passage of fluid through the orifice 32;

Voss does not teach a flow control insert having a flow control orifice and being sized and shaped for telescopic engagement with said in-take orifice, the flow control orifice having a cumulatively lesser cross section than said intake orifice.

"Telescoping" is defined by Merriam-Webster's Online Dictionary as "to slide or pass one within another like the cylindrical sections of a collapsible hand telescope".

Mohs teaches a valve 10 with body 11 (like valve member of the instant invention) with a fluid bore 23 (orifice) including a valve stem 13 inserted in the bore (like flow control insert of the instant invention) with smaller fluid bore 14 therethrough "for controlling the flow into and out of a groundwater sampling device." The stem is shown in figure 3 in a movable telescoping arrangement.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a valve stem with fluid bore as substantially taught by Mohs "for controlling the flow into and out of a groundwater sampling device."

As for claim 2. the Voss cap 20 is shaped to generally define a first convex dome extending outwardly from the pipe at a first end as shown. The cap 20 is substantially centered on the longitudinal axis of symmetry of the pipe. The cap 20 has means 26 to which a cord may attach.

Claims 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voss (US Patent 5,404,949) as modified by Mohs (US Patent 5,753,831) and applied to claims 1 and 2 above and further in view of Toon et al. (US Patent 4928541)

The reference as applied above do not expressly teach the flow control insert further comprises means for filtering particulates.

Toon discloses a sampler including an assembly 76 with a check valve 79. When the assembly 76 is coupled to a second end of a sampler. The assembly 76 includes a filter, which prevents the larger particles of dirt from entering the sampler (column 6 lines 19-25).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a filter in a sampler check valve assembly in order to prevent larger particles of dirt from entering the sampler and clogging the device.

Claims 9 and 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Voss (US Patent 5,404,949) as modified by Mohs (US Patent 5,753,831) and Toon et al. (US Patent 4928541) and applied to claim 8 and 13 above and further in view of Pratt (US Patent Application 2002/0104648).

The references as applied above do not expressly teach negative buoyancy means for adjusting buoyancy of said apparatus when submersed in liquid.

Pratt '648 discloses a bailer (sampler) 10 teaching weights 18 for adjusting the bailer weight and it descent rate in a fluid body so as not to cause agitation that would disturb sediments and the like (paragraphs 0004 and 0005) and increase oxygen content thereby generating false data.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide weights for adjusting the bailer weight and it decsent rate in a fluid body so as not generate false data from the disturbance caused by uncontrolled descent rate.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Voss (US Patent 5,404,949) as modified by Mohs (US Patent 5,753,831) and applied to claim 2 above and further in view of Pratt (US Patent Application 2002/0104648).

The references as applied above do not expressly teach negative buoyancy means for adjusting buoyancy of said apparatus when submersed in liquid.

Pratt '648 discloses a bailer (sampler) 10 teaching weights 18 for adjusting the bailer weight and it descent rate in a fluid body so as not to cause agitation that would disturb sediments and the like (paragraphs 0004 and 0005) and increase oxygen content thereby generating false data.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide weights for adjusting the bailer weight and it decsent rate in a fluid body so as not generate false data from the disturbance caused by uncontrolled descent rate.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles D. Garber whose telephone number is (571) 272-2194. The examiner can normally be reached on 6:30 a.m. to 3:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cdg

CHARLES GARBER
PRIMARY EXAMINER